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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,326	07/05/2001	Carl P. Schulte	82464RLO	2611

7590 11/02/2005  
Thomas H. Close  
Patent Legal Staff  
Eastman Kodak Company  
343 State Street  
Rochester, NY 14650-2201

EXAMINER

THOMPSON, JAMES A

ART UNIT	PAPER NUMBER
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2624

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/899,326

Applicant(s)

SCHULTE ET AL.

Examiner

James A. Thompson

Art Unit

2624

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 12 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-5.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

1. The proposed amendments to independent claims 1 and 4 change the overall scope of the claims. Thus, the **proposed amendments to the claims will not be entered.**

### *Response to Arguments*

2. Applicant's arguments filed 12 October 2005 have been fully considered but they are not persuasive.

Regarding page 4, line 2 to page 5, line 19: Baretta (US Patent 5,901,243) teaches correction for an exposure condition (column 3, lines 55-64 of Baretta), as cited on page 7, lines 4-7 of the previous office action, dated 09 August 2005. A test is made to determine whether or not the exposure should be recomputed (column 3, lines 55-57 of Baretta). Thus, Baretta does teach a plurality of different exposure conditions, said different exposure conditions corresponding to the reading conditions of a particular scan. The exposure condition of a scanner changes over time. Thus, the correction of the exposure condition must be modified. Though Baretta is directed to the application of exposure correction to scanners, a scanner is simply another type of digital image capturing device. Both digital cameras and scanners have exposure conditions for which correction is needed. Thus, the exposure condition correction of Baretta can be applied to the system taught by Stokes (US Patent 6,345,128 B1), which would provide a plurality of different exposure correcting transforms. Instead of providing only tone scale correcting transforms, as taught by Stokes, exposure correcting transforms, as taught by Baretta, are also

Art Unit: 2624

provided. Additionally, while the exposure condition for digital images captured with a digital camera may change more rapidly than for digital images captured with a scanner, the exposure condition correction taught by Baretta will still work when combined with the system taught by Stokes. Furthermore, both Stokes and Baretta are directed to tone correction of captured digital image data. By combination, Stokes and Baretta teach each and every limitation of present claim 1. The proposed amendments to claim 1 will require further consideration with respect to the cited prior art and, if said proposed amendments were to overcome the presently cited prior art, a further search would be required.

Regarding page 5, line 20 to page 6, line 5: Shalit (US Patent 5,345,315) has not been relied upon to teach any of the limitations of present claim 1. With respect to claim 4, Shalit has been relied upon to teach displaying a visual digital image on a display so that the difference between the image on display and the printed image can be correlated [see page 10, line 28 to page 11, line 2 of said previous office action].

Again, it is by combination that each and every limitation of claim 4 is taught. Stokes does not teach changing the tone scale correcting. Thus, when combined with Baretta, the exposure correcting is not changed either. It is simply the plurality of possible exposure corrections taught by Baretta that is implemented into the system taught by Stokes. Stokes teaches user selection of the most satisfying image [see page 10, lines 18-22 of said previous office action] while Shalit provides the very specific means by which a user can select the most satisfying image [see page 10, line 28 to page 11, line 15 of said previous office action].

Art Unit: 2624

Regarding page 6, lines 6-8: Gilman (US Patent 5,913,014) teaches the different types of digital image capture devices that can have correcting transforms applied to them. The relation of Gilman to the other references has been specifically described on page 12 line 16 to page 13, line 3 of said previous office action.

Regarding page 6, lines 9-21: Stokes and Baretta have already been shown above and in said previous office action to be clearly related to one another and to teach, *by combination*, each and every limitation of claim 1. The motivation to combine has clearly been set forth [see page 7, lines 10-17 of said previous office action]. Stokes provides a plurality of tone correcting transforms from which one can be selected. Baretta teaches exposure correcting transforms, which is another attribute that can be further adjusted to improve the resultant image. *By combination*, Stokes in view of Baretta therefore teaches providing a plurality of exposure and tone scale correcting transforms. Thus, there is a clear relationship and adequate motivation for one of ordinary skill in the art at the time of the invention to combine Stokes and Baretta.

Regarding page 6, line 22 to page 7, line 5: Shalit has not been relied upon to teach a plurality of tone scale and exposure transforms. Shalit has simply been relied upon to teach displaying a visual digital image on a display so that the difference between the image on display and the printed image can be correlated [see page 10, line 28 to page 11, line 2 of said previous office action]. The teachings upon which Shalit has been relied would clearly suggest particular modifications to Stokes, specifically providing the display that is taught in Shalit. While the display taught by Shalit may, in the Shalit

Art Unit: 2624

reference, be used for a different purpose, said display is clearly applicable to the system of Stokes. Applicant is respectfully reminded that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

#### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Thompson whose telephone number is 571-272-7441. The examiner can normally be reached on 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David K. Moore can be reached on 571-272-7437. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



29 October 2005

James A. Thompson  
Examiner  
Art Unit 2624



THOMAS D.  
~~LEE~~  
EXAMINER